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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.S., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

L.S.,

Defendant and Appellant.

E062589

(Super.Ct.No. RIJ1200770)

OPINION

APPEAL from the Superior Court of Riverside County. Jacqueline C. Jackson,
Judge. Affirmed.

Merrill Lee Toole, under appointment by the Court of Appeal, for Defendant and
Appellant.

Gregory P. Priamos, County Counsel, Anna M. Marchand, Deputy County
Counsel, for Plaintiff and Respondent.

The juvenile court terminated the parental rights of defendant and appellant L.S. (Mother) to her daughter A.S.¹ (Welf. & Inst. Code, § 366.26),² and denied Mother's request to change a court order (§ 388). Mother contends the juvenile court erred by denying her request to change a court order. (§ 388.) Mother also asserts the juvenile court erred by not applying the parent-child bond exception to termination. (§ 366.26, subd. (c)(1)(B)(i).) We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

A. BACKGROUND

A.S., a female, was born in July 2012. At the time of A.S.'s birth, Mother was legally married to D.S.; however, Mother and D.S. had filed for divorce in February 2011. A.S.'s biological father was J.A. (Father). The juvenile court found D.S. was A.S.'s legal father, and found J.A. was A.S.'s presumed father.

Mother and Father were living with Mother's parents (Grandparents). Mother had an older son, A.S.1, for whom D.S. was the biological father. A.S.1 was five years old in 2012. D.S. had sole legal and physical custody of A.S.1. However, D.S. resided on the Grandparents' property, in a trailer, so A.S.1 could frequently visit Mother.

¹ The initials for the child's legal name are A.A. However, throughout the juvenile court case she was referred to as A.S. Accordingly, for the sake of consistency, we will refer to the child by the initials A.S.

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

B. FIRST DETENTION

In July 2012 Mother gave birth to A.S. in a bathtub at home, at approximately 11:00 a.m. Mother did not have access to a telephone, so she waited until approximately 5:00 p.m., when Father arrived home, to go to the hospital. Mother did not have access to a telephone because Father had taken the family's one telephone with him to work. Mother had not received prenatal care due to problems with Mother's Medi-Cal benefits; however, A.S. weighed six pounds, 13 ounces. Mother was discharged from the hospital, but A.S. was admitted for observation.

A.S. tested positive for amphetamine, methamphetamine, and opiates, but Mother tested negative for controlled substances. Father admitted to a social worker for the Riverside County Department of Public Social Services (the Department) that he had a history of abusing methamphetamine and marijuana. Father admitted abusing methamphetamine with Mother while Mother was pregnant. Mother admitted abusing methamphetamine early in her pregnancy, prior to knowing she was pregnant. Mother explained A.S. may have tested positive for opiates because Mother ingested cough syrup with codeine during labor, to help with the pain.

The Department placed A.S. in protective custody. The Department filed a petition on behalf of A.S. alleging (1) Mother neglected A.S. by not receiving prenatal care and abusing drugs while pregnant; (2) Mother abused controlled substances and suffered an arrest for being under the influence of a controlled substance; (3) Father abused drugs; and (4) Father reasonably should have known Mother abused drugs while pregnant and he failed to intervene to protect the child. (§ 300, subd. (b).) The juvenile

court found the Department presented a prima facie case reflecting A.S. came within the juvenile court's jurisdiction (§ 300, subd. (b)). The court ordered A.S. be detained. The court granted Mother and Father visitation with A.S.

C. FIRST JURISDICTION AND DISPOSITION

On August 20, A.S. was ready to be discharged from the hospital. A.S. was placed in Grandparents' custody. Mother and Father participated in outpatient substance abuse treatment. An employee of the substance abuse treatment program explained to a Department social worker that it typically takes three weeks for controlled substances to cycle out of a fetus's system, so Mother had likely consumed drugs within three weeks of giving birth, since A.S. tested positive for controlled substances at birth. However, Mother's September hair follicle drug test reflected negative results for controlled substances.

The juvenile court sustained the petition and found A.S. came within the juvenile court's jurisdiction (§ 300, subd. (b)). The court ordered A.S. removed from Mother's and Father's (Parents) custody. The court granted Parents visitation with A.S., and authorized Parents to reside in a trailer on Grandparents' property.

D. SIX-MONTH STATUS REVIEW

In April 2013, A.S. appeared to be developmentally on track. Mother completed substance abuse treatment, tested negative for drugs, finished her parenting classes, and participated in individual and group counseling. The juvenile court found Mother made satisfactory progress on her case plan. The court ordered A.S. to be placed in Parents'

custody on a plan of family maintenance, with the conditions that Parents (1) continue residing with Grandparents, and (2) test negative for controlled substances.

E. SECOND DETENTION

Parents moved and were residing with friends in Banning. A.S. continued to reside with Grandparents; however, Grandparents were not interested in adopting A.S. A.S.'s maternal aunt (Aunt) expressed an interest in adopting A.S.

Mother tested positive for amphetamines and marijuana on June 5, 2013. On July 27, the Department was notified that Mother was found sleeping at a casino. Mother was transported to a hospital and tested positive for methamphetamine. Mother was transferred to a mental health facility. Mother was diagnosed with Bipolar I Disorder, Schizophrenic Disorder, Paranoia Type Chronic, and Amphetamine Dependency. Mother admitted relapsing.

On November 13, Mother tested positive for marijuana. Mother missed two drug tests in July, one test in August, and two tests in September. Mother was inconsistent with taking her psychotropic medication, which was blamed on a lack of medical insurance.

Parents had unsupervised visits with A.S. Grandparents reported Parents interacted well with A.S. during visits. A Department social worker observed some visits and found Parents were "very attentive to [A.S.'s] needs." The social worker noted A.S. was "smiling and laughing" during visits.

On December 13, the Department filed a supplemental petition on behalf of A.S. (§ 387.) In the supplemental petition, the Department noted the court had ordered

family maintenance with the conditions that Parents continue residing with Grandparents and test negative for controlled substances. The Department alleged (1) Mother tested positive for methamphetamine and marijuana, and missed six tests; (2) Mother was inconsistent with taking her psychotropic medications; (3) Parents were not residing with Grandparents, and did not have stable housing; and (4) Father was the sole provider for the family and lacked stable employment. The juvenile court found a prima facie case had been made that A.S. came within the juvenile court's jurisdiction. The court ordered A.S. removed from Parents' custody. The court granted Parents supervised visitation with A.S. a minimum of once a week.

F. SECOND JURISDICTION AND DISPOSITION

On December 12, 2013, Mother began attending a substance abuse program, but she had "poor attendance." By February 2014, Mother was regularly participating in the program two times a week. Mother tested negative for drugs six times as part of the program. Parents were still residing with a friend in Banning. A Department social worker directed Parents to take a drug test on February 21; Parents missed the test. A.S. continued residing with Grandparents.

The juvenile court sustained the supplemental petition. The court ordered A.S. removed from Parents' custody. The court denied reunification services for Parents, but granted Parents supervised visitation with A.S.

G. TERMINATION AND REQUESTS TO CHANGE A COURT ORDER

On May 8, 2014, Father was at work when he suffered a heart attack. Father died as a result of the heart attack. On May 6, 2014, A.S. began residing with Aunt.

Aunt had been involved in A.S.'s life since A.S. was placed with Grandparents at age two months, in September 2012. Mother had weekly supervised visits with A.S. Mother would sit on the floor and play with A.S. Mother "often show[ed] affection to [A.S.] by kissing and hugging her."

On November 17, Mother filed a request to change a court order. Mother asserted that circumstances had changed because she completed an outpatient treatment program (she completed it in July), tested negative for drugs, attended 12-step meetings, and participated in counseling. Mother obtained a job at an automotive parts company, but broke her leg several months after starting the job. Mother planned to return to work in early December and then obtain her own residence. Mother requested the court extend her reunification services and transition A.S. back into Mother's custody. The juvenile court denied Mother's request after finding insufficient evidence of changed circumstances between July and November.

As of December 3, 2014, Mother had weekly supervised visits with A.S. Mother consistently attended the visits and often arrived early. A.S. was excited to see Mother and laughed and smiled at Mother. Mother brought snacks, educational toys, and stuffed animals for A.S. Mother often read to A.S. during visits. A.S. "appear[ed] to be in a happier mood when she is visiting with her mother." On December 1, Mother tested negative for drugs via a saliva test.

A.S. continued to reside with Aunt. A.S. was "clingy" with Aunt when the two were separated, and A.S. was happy to see Aunt when they were reunited. Aunt's children would run out into the driveway to greet A.S. upon A.S.'s return home from

visits. A.S. would smile and hug Aunt's children upon being greeted. Aunt and her husband were still interested in adopting A.S.

On December 10, 2014, Mother filed another request to change a court order. Mother's request essentially repeated her November request. However, Mother also noted that, when she saw her doctor in June, the doctor concluded Mother did not need medication. Mother's December hair follicle drug test reflected negative results for a variety of controlled substances.

Mother testified at the court hearing on December 15. Mother said she had been sober for more than a year. Mother explained that she was able to care for A.S. while they were both living at Grandparents' residence. During that time, Mother fed A.S., changed her diapers, and played with her. After A.S. was moved to Aunt's home and Father died, Mother was only able to visit A.S. once a week during supervised visits. A.S. referred to Mother as "mommy." Mother was employed.

In regard to Mother's request to change a court order, the juvenile court found Mother satisfied the first prong by proving a change in circumstances. In particular, the juvenile court noted Mother was now sober and appeared "visibly different." As to the second prong, the juvenile court found A.S. was removed when she was approximately one month old, and that she was now approximately two and one-half years old. The court noted A.S. had spent approximately one-third of her life with Aunt. The court remarked that Mother had "made significant strides," but found it was in A.S.'s best interests to not "disrupt her permanent plan." The court denied Mother's request to change a court order.

In regard to termination of parental rights, the juvenile court found Mother and A.S. had a bond, but did not believe the bond was sufficiently significant to overcome the statutory preference for adoption. The court found it likely that A.S. would be adopted. The court terminated Mother's parental rights to A.S. The court granted Mother increased visitation with A.S., to the extent Aunt and her husband could accommodate the increase. The court referred to the visitation as "holiday visitation."

DISCUSSION

A. REQUEST TO CHANGE A COURT ORDER

Mother contends the juvenile court erred by denying her request to change a court order.

Under section 388, a parent may petition a juvenile court to modify a previous order on the ground of changed circumstances. (§ 388; *In re Nolan W.* (2009) 45 Cal.4th 1217, 1235.) The petitioner has the burden to show, by a preponderance of the evidence, a change of circumstances, and to show that the proposed modification is in the child's best interests. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1228; Cal. Rules of Court, rule 5.570(h)(1).) "We review the grant or denial of a petition for modification under section 388 for an abuse of discretion." (*B.D.*, at p. 1228.)

The juvenile court found Mother satisfied the changed circumstances prong. Accordingly, we focus on the best interests prong of the analysis. The best interests of the child are determined by considering (1) the seriousness of the problem that led to the dependency; (2) the strength of the parent-child bond; and (3) whether the problem that

led to the dependency has been resolved, or the ease with which it may be resolved. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685.)

The problem that initially led to the dependency in 2012 involved Mother abusing methamphetamine and marijuana while pregnant, and neglecting A.S. by not seeking prenatal care. A.S. tested positive for methamphetamine at birth. In 2013, the juvenile court ordered A.S. placed in Parents' custody on a plan of family maintenance, with the conditions that Parents (1) continue residing with Grandparents, and (2) test negative for controlled substances. Rather than comply with the conditions, Parents moved to a friend's house and, in June, Mother relapsed into abusing marijuana and methamphetamine. Mother tested positive for marijuana in November. As a result, a supplemental petition was sustained—the supplemental petition also concerned Mother's drug use.

Given that Mother abused methamphetamine and marijuana while pregnant, causing A.S. to be exposed to drugs in the womb, and then compounded that issue by not seeking prenatal care, there is evidence of a serious problem that led to the dependency. The seriousness of the problem is further exacerbated by Mother's relapse at the exact time she was given an opportunity to have greater custody of A.S. The juvenile court could reasonably conclude from the evidence that Mother's drug addiction was a serious problem that interfered with her ability to provide appropriate care for A.S.

The next issue to analyze is the strength of the parent-child bond. A.S. was born in July 2012. A.S. remained in the Neonatal Intensive Care Unit until August, when she

was then placed in foster care, and then in Grandparents' care. In May 2014, A.S. was placed with Aunt. When A.S. was living with Grandparents, Mother lived on the same property and thus was able to frequently visit A.S.; however, after Mother's relapse, Mother was only able to visit A.S. weekly at the Department's offices for supervised visits. The change in visitation was ordered in December 2013.

The juvenile court could reasonably conclude Mother and A.S. had a friendly, visitor-type bond, but not a parent-child bond, from the evidence that (1) Mother moved away from Grandparents' house when living at Grandparents' house was a condition of gaining greater custody of A.S.—the act of moving away from A.S. demonstrates a lack of a parent-child relationship; and (2) for the year prior to the request to change a court order, Mother only had weekly supervised visits with A.S.—the limited visitation reflects little time for a parent-child bond to develop, and supports the conclusion that Mother and A.S. had a friendly visitor-type of relationship.

The final issue is whether the problem that led to the dependency has been resolved, or the ease with which it may be resolved. Mother had been sober for approximately one year at the time of her request to change a court order. Mother made the request in December 2014, and had last tested positive for marijuana in November 2013. There had also been approximately one year between Mother's initial sobriety in the case (August 2012) and Mother relapsing (June 2013). Given that Mother had previously relapsed into abusing methamphetamine after approximately one year of sobriety, the juvenile court could reasonably find that the drug addiction issue had not

yet been resolved because more time was needed to determine if Mother would remain sober.

In sum, the juvenile court could reasonably conclude (1) the problem that led to the dependency was serious; (2) Mother and A.S. do not have a parent-child type bond; and (3) the problem that led to the dependency had not yet been resolved. Given these findings, the juvenile court acted within its discretion by finding the best interests prong of the analysis was not satisfied. Accordingly, we conclude the juvenile court did not err by denying Mother's request to change a court order.

Mother contends the juvenile court abused its discretion, in part, because it ordered an increase in visitation after denying Mother's request. Mother contends the order increasing visitation reflects the court's acknowledgment that it was in A.S.'s best interests to spend more time with Mother. On December 15, when the juvenile court ordered increased visitation, it remarked that it was "holiday visitation." In other words, the increased visitation was likely due to the holiday season, rather than a contradictory best-interests analysis. Therefore, we are not persuaded that the juvenile court abused its discretion.

B. PARENT-CHILD BOND EXCEPTION

Mother contends the juvenile court erred by not applying the parent-child bond exception to terminating parental rights. (§ 366.26, subd. (c)(1)(B)(i).)

If a juvenile court finds a dependent child is adoptable, then it will terminate parental rights unless one of the statutorily enumerated exceptions is applicable. (§ 366.26, subd. (c)(1).) One of the enumerated exceptions provides that parental rights

shall not be terminated if “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).)

There is a split of authority as to which standard of review is applicable to a decision to not apply the parent-child bond exception—(1) substantial evidence; (2) abuse of discretion; or (3) a hybrid of substantial evidence and abuse of discretion. (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 424-425 [Fourth Dist., Div. Three applied the substantial evidence standard]; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 [Fourth Dist., Div. One applied the substantial evidence standard]; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 [First Dist., Div. Three applying the abuse of discretion standard]; *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449 [Second Dist., Div. Eight applying the abuse of discretion standard]; *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622 [Second Dist., Div. Seven applying the hybrid standard]; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315 [Sixth Dist. applying the hybrid standard].)

Although somewhat unclear from Mother’s brief, it appears she is applying the hybrid standard due to her describing the issue as “whether the judgment was reasonable, based on the evidence.” Under the hybrid standard, the issue of whether a parent maintained regular visitation and contact with the child is reviewed under the substantial evidence standard of review, while the abuse of discretion standard applies to the issue of whether the child would benefit from continuing the relationship. (*In re K.P.*, *supra*, 203 Cal.App.4th at p. 622.) Because Mother appears to be applying the hybrid standard, we will also apply that standard for purposes of this case.

It appears the juvenile court found Mother satisfied the first prong of maintaining regular visitation and contact with A.S. We infer this finding from the juvenile court's conclusion that Mother and A.S. shared "a bond." The juvenile court did not apply the parent-child bond exception because it found the bond between Mother and A.S. did not overcome the statutory preference for adoption, which we infer is the juvenile court's reference to the benefit prong. Accordingly, we will focus our discussion on the benefit prong of the analysis.

"The benefit to the child from continuing such a relationship must . . . be such that the relationship "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (In re Aaliyah R., supra, 136 Cal.App.4th at p. 449.)

A.S. was excited to see Mother at visits. A.S. laughed and smiled at Mother. Mother brought snacks, educational toys, and stuffed animals for A.S. Mother often read to A.S. during visits. A.S. "appear[ed] to be in a happier mood when she is visiting with her mother."

A.S. resided with Aunt since May 2014—for approximately seven months prior to the December termination hearing. A.S. was "clingy" with Aunt when the two were separated, and A.S. was happy to see Aunt when they were reunited. Aunt's children would run out into the driveway to greet A.S. upon A.S.'s return home from visits. A.S. would smile and hug Aunt's children upon being greeted.

The foregoing evidence reflects Mother filled the role of a friendly visitor. Mother was a person A.S. was happy to see and spend time with; however, A.S. lived

with Aunt, was “clingy” with Aunt, and was happy when she was reunited with Aunt after visiting with Mother. From this evidence, the juvenile court could reasonably conclude A.S.’s relationship with Mother, while happy, did not promote A.S.’s well-being to such a degree as to outweigh the well-being the child would gain as a permanent addition to Aunt’s home because the relationship with Mother was not sufficiently significant. Accordingly, we conclude the juvenile court did not abuse its discretion.

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

RAMIREZ
P. J.

McKINSTER
J.